

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION**

IN RE:)	
)	
CAH ACQUISITION COMPANY #1, LLC)	CASE NO. 19-00730-JNC
d/b/a WASHINGTON COUNTY)	
HOSPITAL,)	CHAPTER 11
<u>Debtor.</u>)	

**MOTION TO VACATE ORDER GRANTING EX PARTE MOTION FOR
PRODUCTION OF DOCUMENTS AND EXAMINATION
PURSUANT TO BANKRUPTCY RULE 2004**

Thomas W. Waldrep, Jr., Litigation Trustee in the above-captioned case (the “Trustee”) for CAH Acquisition Company #1, LLC d/b/a Washington County Hospital (“CAH 1”), by and through his undersigned counsel, hereby files this Motion to Vacate Order Granting Ex Parte Motion for Production of Documents and Examination Pursuant to Bankruptcy Rule 2004 (the “Motion”). This Motion seeks entry of an order, pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 60(b) of the Federal Rules of Civil Procedure (the “Civil Rules”), vacating and setting aside the order entered on May 17, 2023 (the “2004 Order”) [Dkt. No. 1576] directing U.S. Bank National Association (“US Bank”) to produce Suspicious Activity Reports (“SARs”) for certain accounts. In support of his Motion, the Trustee respectfully states as follows:

1. On May 15, 2023, the Trustee filed the Ex Parte Motion for Production of Documents and Examination Pursuant to Bankruptcy Rule 2004 (the “2004 Motion”) [Dkt. No. 1575] seeking production of SARs for certain identified deposit accounts.
2. After the 2004 Order was entered, the Trustee issued a subpoena to US Bank.

3. US Bank responded to the subpoena by identifying applicable law and regulations prohibiting the disclosure or discovery of SARs, including 31 U.S.C. § 5318, 12 C.F.R. § 21.11, and 31 C.F.R. § 1020.320.

4. After reviewing the applicable statutes and regulations, the Trustee withdrew the subpoena to US Bank. For the avoidance of doubt and to provide clarity for any potentially-affected parties, the Trustee seeks entry of an order vacating the 2004 Order.

5. Civil Rule 60(b), made applicable to bankruptcy proceedings by Bankruptcy Rule 9024, “[o]n motion and just terms,” to relieve parties from the obligations of any judgment, order, or proceeding for six enumerated reasons, including “(1) mistake, inadvertence, surprise, or excusable neglect;” “(4) the judgment is void;” or “(6) any other reason that justifies relief.” Such motion must only be “made within a reasonable time” from the entry of the order or judgment. Fed. R. Civ. Proc. 60(c).

6. The 2004 Order should be vacated and set aside, as it directs disclosure and discovery of materials—SARs—subject to statutory and regulatory privileges against such disclosure and discovery.

WHEREFORE, the Trustee respectfully requests that the Court enter an order vacating and setting aside the 2004 Order, and providing such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 5th day of July, 2023.

**WALDREP WALL BABCOCK
& BAILEY PLLC**

/s/ Thomas W. Waldrep, Jr.
Thomas W. Waldrep, Jr. (NC State Bar No. 11135)
Kelly A. Cameron (NC State Bar No. 55664)

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Attorneys for the Litigation Trustee

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**NOTICE OF MOTION TO VACATE ORDER GRANTING EX PARTE MOTION
FOR PRODUCTION OF DOCUMENTS AND EXAMINATION
PURSUANT TO BANKRUPTCY RULE 2004**

NOTICE IS HEREBY GIVEN that the Trustee has filed a **MOTION TO VACATE ORDER GRANTING EX PARTE MOTION FOR PRODUCTION OF DOCUMENTS AND EXAMINATION PURSUANT TO BANKRUPTCY RULE 2004** (the "Motion").

FURTHER NOTICE IS GIVEN that the Motion may be allowed provided no responses and request for hearing is delivered by a party-in-interest in writing to the Clerk, United States Bankruptcy Court, P.O. Box 791, Raleigh, NC 27602, are received within FOURTEEN (14) days of service of the Motion.

FURTHER NOTICE IS GIVEN that any responses to the Motion shall be mailed to the Trustee at the address given below, and,

FURTHER NOTICE IS GIVEN that, if a response and request for hearing is filed by a party-in-interest in writing within the time indicated, a hearing will be conducted on the Motion and any such responses thereto, and all interested parties will be notified accordingly. If no request for hearing is timely filed, the Court may rule on the Motion *ex parte* without further notice.

DATE OF NOTICE: July 5, 2023.

**WALDREP WALL BABCOCK
& BAILEY PLLC**

/s/ Thomas W. Waldrep, Jr.

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Attorneys for the Litigation Trustee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the **MOTION TO VACATE ORDER GRANTING EX PARTE MOTION FOR PRODUCTION OF DOCUMENTS AND EXAMINATION PURSUANT TO BANKRUPTCY RULE 2004** was filed electronically in accordance with the local rules and served upon all parties listed below through the CM/ECF system or by United States First Class Mail.

Via CM/ECF

All parties who have filed a notice of appearance and request for service pursuant to Bankruptcy Rule 2022, and the following:

Brian Behr, *United States Bankruptcy Administrator*

Via United States First Class Mail

Kenneth C. Rudd
1211 Avenue of the Americas
New York, NY 10036

David B. Chenkin
1211 Avenue of the Americas
New York, NY 10036

Attorneys for US Bank, National Association

This, the 5th of July, 2023.

**WALDREP WALL BABCOCK
& BAILEY PLLC**

/s/ Thomas W. Waldrep, Jr.

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